



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL

MAY -5 2011

Robert Todd Schilling
367 Avenue of the Cities, Suite D
East Moline, IL 61244

RE: MUR 6367

Dear Mr. Schilling:

On September 7, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 26, 2011, based upon the information contained in the complaint, and information provided by you, the Commission decided to dismiss the complaint and closed its file in this matter. Accordingly, the Commission closed its file in this matter on April 26, 2011.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the dispositive General Counsel's Report is enclosed for your information.

If you have any questions, please contact Kim Collins, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Christopher Hughey
Acting General Counsel

BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosure
General Counsel's Report

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the Matter of)
5)
6 MUR 6367) CASE CLOSURE UNDER THE
7 VETERANS FOR THE CONSTITUTION) ENFORCEMENT PRIORITY
8 WILLIAM ALBRACHT,) SYSTEM
9 AS TREASURER)
10 BOBBY SCHILLING FOR CONGRESS)
11 MITCH J. HECKENCAMP,)
12 AS TREASURER)
13 ROBERT SCHILLING)
14

15 **GENERAL COUNSEL'S REPORT**

16 Under the Enforcement Priority System, matters that are low-rated _____

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18 _____ are forwarded to the Commission with a recommendation for dismissal. The
19 Commission has determined that pursuing low-rated matters, compared to other higher-
20 rated matters on the Enforcement docket, warrants the exercise of its prosecutorial
21 discretion to dismiss these cases. The Office of General Counsel scored MUR 6367 as a
22 low-rated matter.

23 In this matter, complainant James P. Moody asserts that respondents, Veterans for
24 the Constitution, f/k/a Veterans for Schilling, and William Albracht, in his official
25 capacity as treasurer ("V4C"), Bobby Schilling for Congress and Mitch J. Heckencamp,
26 in his official capacity as treasurer ("Schilling Committee"), violated the Federal Election
27 Campaign Act of 1971, as amended ("the Act"), when V4C erected at least one billboard
28 in support of Robert Schilling, then a candidate for the U.S. House of Representatives in
29 Illinois' 17th congressional district. Specifically, the complaint alleges that V4C violated
30 the Act because it failed to register and report as a political committee in a timely manner

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1 and to include proper disclaimers on its billboards¹, coordinated activities with
2 Schilling's principal campaign committee concerning the placement of the billboards,
3 and used the candidate's name despite its status as an unauthorized committee.

4 Respondent V4C acknowledges that it should have registered and reported as a
5 political committee earlier, but took remedial measures as soon as it learned of its
6 obligations. Further, V4C acknowledges that its billboards required a disclaimer, but
7 maintains that it complied with the statutory and regulatory requirements. Moreover,
8 V4C acknowledges that, as an unauthorized committee, it should not have used
9 Schilling's name, but it complied shortly thereafter when it received information that the
10 initial name violated the Act. Both V4C and the Schilling Committee deny that there was
11 any coordination between the committees concerning the placement of a V4C billboard
12 following a May 7, 2010 fundraising dinner, which yielded \$1,350 in contributions.

13 With respect to V4C's registration and reporting obligations, V4C acknowledges
14 it should have filed and reported earlier than it did. See 2 U.S.C. § 433(a). In its
15 response, V4C states that it did not immediately comply with the reporting provisions
16 because it is a grassroots organization that consists of a "loose affiliation" of three
17 individuals who only learned of the reporting obligations nine days after qualifying for
18 political committee status.² Once notified, V4C states it immediately contacted the
19 Commission for guidance, and even made a second request before it received a

¹ There were at least two billboards at issue in the complaint. One billboard was apparently erected some time before May 2, 2010, according to the complainant, while one or more were presumably put up following a May 7, 2010 fundraiser after which V4C indicated it was going to use the proceeds raised to erect its next billboard.

² The Act defines a "political committee" as any committee, club, association, or other group of persons that receives "contributions" or makes "expenditures" for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A).

1 Commission handbook. Thereafter, in mid-to-late May, V4C changed its name, updated
2 its bank account and checks, patched over its billboard to reflect the new name, and filed
3 a Statement of Organization with the Commission. Finally, V4C notes it filed its first
4 quarterly report in a timely manner.

5 Under Commission regulations, a communication is coordinated with a candidate,
6 an authorized committee, or a political party committee, if the communication meets a
7 three-part test. 11 C.F.R. § 109.21.

8 The first prong of the test provides that the communication must be paid for by a
9 person other than the Federal candidate, the candidate's authorized committee, political
10 party committee, or any agent of the foregoing. 11 C.F.R. § 109.21(a)(1). The first
11 prong is satisfied in this matter because V4C is a third-party payor.

12 The second prong of the test requires that the communication consists of either an
13 electioneering communication; a public communication that expressly advocates the
14 election or defeat of a clearly identified candidate; or a public communication that refers
15 to a House or Senate candidate in the relevant jurisdiction 90 days or fewer before the
16 election. 11 C.F.R. § 109.21(u).³

17 Both billboards contained the following language: "We swore to defend the
18 Constitution. Some of bled, some of us died. Mr. Hare, the Constitution matters to us."
19 The complainant appears to imply that the content standard for a coordinated
20 communication was met when V4C's billboards, located in Schilling's congressional
21 district, referenced a candidate within 90 days of the election, as provided in 11 C.F.R.

³ This regulation was amended effective as of December 1, 2010, which was subsequent to the activity in this matter. See *Coordinated Communications*, 74 Fed. Reg. 55947 (Sept. 15, 2010).

1 § 109.21(c)(4)(i).⁴ While V4C did indicate in its response that its first billboard, which
2 was erected prior to the May 7th fundraising dinner, was in place during the 90-day
3 period, the information provided by the parties does not indicate whether the second
4 billboard at issue remained standing within the 90-day period immediately before the
5 general election.⁵

6 The third prong of the coordination test requires that the parties have engaged in
7 conduct that meets any of the following standards: (1) the communication is created,
8 produced or distributed at the request or suggestion or assent of a candidate, his
9 authorized committee, or an agent of the foregoing; (2) the candidate, authorized
10 committee, or agent is materially involved in decisions regarding the content, intended
11 audience, means or mode of communication; (3) there is substantial discussion about the
12 communication between the person paying for the communication and the candidate, the
13 authorized committee, or an agent; (4) the person paying for the communication and the
14 campaign share common vendors; or (5) the communication is paid for by a person or by
15 the employer of a person who was an employee or independent contractor of the
16 candidate or candidate's committee. 11 C.F.R. § 109.21(d)(2)-(5).

17 The only evidence the complainant points to concerning the respondents' conduct
18 is a reference to a letter generated after the May 7th fundraiser (see Attachment C to the
19 Complaint) where the organizers for V4C thanked the participants and indicated that the

⁴ Neither party raises the possibility that the billboard may not have been located within the 17th congressional district of Illinois.

⁵ Although two billboards were erected some time in April or May 2010, and it appears that they were still being paid for through July 2010, based on V4C's check register, there is no information to conclude whether the second billboard, which was erected after the May 7, 2010 fundraising dinner, remained in place at least until 90 days prior to the general election on November 2, 2010 (the primary was held on February 2, 2010).

1 proceeds from the fundraiser would be used to erect another billboard. The respondents
2 deny that they coordinated the placement of a billboard.

3 In addressing whether disclaimers were required in this case, the Act requires
4 disclaimers whenever a political committee makes a disbursement "for the purpose of
5 financing any communication" via broadcast, newspaper, magazine, outdoor advertising,
6 mailing, or other general public political advertising, or when any person "makes a
7 disbursement for the purpose of financing communications expressly advocating the
8 election or defeat of a clearly identified candidate." 2 U.S.C. § 441d(a). In this case, V4C
9 acknowledges that its billboards required a disclaimer, but maintains that it complied
10 with the Act and Commission regulations. Although the billboards appear⁶ to have a
11 disclaimer, it is not contained within a box, as required under 11 C.F.R.
12 § 110.11(c)(2)(ii). Moreover, as V4C acknowledges, the disclaimer fails to state that the
13 advertisement was "not authorized" by a candidate, as required under 11 C.F.R.
14 § 110.11(b)(3).

15 Finally, with respect to the allegations that V4C improperly used a candidate's
16 name as its own, the committee acknowledges that it initially used candidate Schilling's
17 name when it formed, but removed his name after learning the Act prohibited
18 unauthorized committees from using a candidate's name. See 2 U.S.C. § 432(e)(4);
19 11 C.F.R. § 102.14(a).

20 In light of the substantial remedial action taken by V4C, the relatively modest
21 amount raised at the fundraiser (\$1,350), which may have been used in erecting
22 billboards supporting the candidate, and in furtherance of the Commission's priorities and

⁶ The attachment to the complaint has a low resolution and shows what appears to be a disclaimer at the bottom of the billboard sign, but the disclaimer is not contained within a box.

resources relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 850 (1985). Additionally, this Office recommends that the Commission remind the Veterans for the Constitution, and William Albracht, in his official capacity as treasurer, about the registration and reporting requirements under 2 U.S.C. § 433(a); the appropriate placement and use of disclaimers under 2 U.S.C. § 441d(a) and 11 C.F.R. §§ 110.11(b)(3) and 110.11(c)(2)(ii); and the prohibitions on using a candidate's name by an unauthorized committee pursuant to 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a).

RECOMMENDATIONS


The Office of General Counsel recommends that the Commission dismiss MUR 6367, close the file, and approve the appropriate letters. Additionally, this Office recommends that the Commission remind the Veterans for the Constitution, and William Albracht, in his official capacity as treasurer, about the registration and reporting requirements under 2 U.S.C. § 433(a); the appropriate placement and use of disclaimers under 2 U.S.C. § 441d(a) and 11 C.F.R. §§ 110.11(b)(3) and 110.11(c)(2)(ii); and the prohibitions on using a candidate's name by an unauthorized committee pursuant to 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a).

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Christopher Hughey
Acting General Counsel

Date 2/22/11

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